

NORTH OGDEN PLANNING COMMISSION

MEETING MINUTES

February 4, 2015

The North Ogden Planning Commission convened in a regular meeting on February 4, 2015 at 6:30 p.m. in the North Ogden City Municipal Building, 505 E. 2600 N. North Ogden, Utah. Notice of time, place and agenda of the meeting was furnished to each member of the Planning Commission, posted on the bulletin board at the municipal office and posted to the Utah State Website on January 29, 2015. Notice of the annual meeting schedule was published in the Standard-Examiner on December 21, 2014.

COMMISSIONERS:

Eric Thomas	Chairman
Don Waite	Vice-Chairman
Scott Barker	Commissioner
Blake Knight	Commissioner (excused)
Brandon Mason	Commissioner
Steven Prisbrey	Commissioner
Dee Russell	Commissioner

STAFF:

Robert O. Scott	City Planner
Gary Kerr	Building Official
Jon Call	City Attorney
Stacie Cain	Deputy City Recorder

VISITORS:

Charles Beckert	Leonard Looney	Ron Smith	Karen Smith
Sharon Wheelwright	Carmen N. Cole	Lola Thompson	Jonathan Arrington
Carl Jeerings	Sky Rands	Ruth J. Clark	LaDawn Hirst
Marie Berrett	Charles Schmalz	JoAnn Schmalz	Mildred Thompson
Myrle Ehmann	Jonathan Badger	Kelly Cevering	Tracy Cevering
Mike Storey	Reed Miller	Carol Miller	Barbara Leatham
Diane Childs	Ben Gerritsen	David Gordon	John Hansen
Nola Hancey	Lynda Merrill	Ann Simmons	

REGULAR MEETING

Chairman Thomas called the meeting to order at 6:33 p.m. Commissioner Russell offered the invocation and led the audience in the Pledge of Allegiance.

CONSENT AGENDA

1. **CONSIDERATION TO APPROVE THE JANUARY 7, 2014 PLANNING COMMISSION MEETING MINUTES.**
2. **CONSIDERATION TO APPROVE THE NORTH POINTE CENTER SUBDIVISION, SECOND AMENDMENT NAME TO NORTH POINTE SUBDIVISION, THIRD AMENDMENT, LOCATED AT APPROXIMATELY 2550 N 400 E**

Vice-Chairman Waite made a motion to approve the consent agenda. Commissioner Barker seconded the motion.

Voting on the motion:

Chairman Thomas	yes
Vice-Chairman Waite	yes
Commissioner Barker	yes
Commissioner Mason	yes
Commissioner Prisbrey	yes
Commissioner Russell	yes

The motion passed.

ACTIVE AGENDA

1. PUBLIC COMMENTS

There were no public comments.

Chairman Thomas noted there has been a request to hear the agenda out of order and consider items six, seven, and eight first.

6. DISCUSSION AND/OR ACTION TO APPROVE A CONDITIONAL USE PERMIT FOR A PRESCHOOL, LOCATED AT APPROXIMATELY 3127 N. 500 E.

A staff memo from City Planner Scott explained when the Planning Commission is acting as a land use authority, it is acting in an administrative capacity and has much less discretion. Examples of administrative applications are conditional use permits, design reviews, and subdivisions. Administrative applications must be approved by the Planning Commission if the application demonstrates compliance with the approval criteria. The applicant is requesting the approval of a Conditional Use Permit to operate a preschool in her home. The memo summarized the applications compliance with City ordinances as follows:

11-7B-3: CONDITIONAL USES

Preschools in the operator's residence that operates four (4) or less hours per session a day and teaches more than nine (9) children, but not more than fourteen (14) children, plus supervisory personnel. An annual review by the planning commission is required. The preschool shall not exceed three hundred (300) square feet of the home or twenty five percent (25%) of the total living space of the home, whichever is less. The preschool area of the home shall conform to the standards of IBC table 1003.2.2.2.

Staff comment: The preschool will have 10 children attending. The hours of operation will be from 9 to 11:30 AM. There will be two classes, one that meets on Monday, Wednesday, and Friday. The other will meet on Tuesday and Thursday. The preschool will operate within the home and is approximately 225 square feet.

11-14-5: BASIS FOR ISSUANCE OF CONDITIONAL USE PERMIT:

The planning commission shall not authorize a conditional use permit unless evidence is presented to establish:

A. The proposed use of the particular location is necessary or desirable to provide a service or facility which will contribute to the general wellbeing of the community.

Staff comment: The zoning ordinance allows preschools as a conditional use to give children the opportunity to learn prior to going to kindergarten and above.

B. Such use will not, under the circumstances of the particular case and the condition imposed, be detrimental to the health, safety and general welfare of persons nor injurious to property and improvements in the community, but will be compatible with and complementary to the existing surrounding uses, buildings and structures.

Staff comment: The applicant has stated that the majority of the students will walk to her home thus avoiding any traffic issues. The home has a circular drive where the students can be dropped off if the parent is driving. The exterior of the home is not going to be modified. No signs have been requested.

C. The proposed use will comply with the regulations and conditions specified in this title for such use.

Staff comment: The application conforms to the zoning ordinance.

D. The proposed use conforms to the goals, policies and governing principles of the master plan for the city. (Ord. 2002-07, 5-28-2002)

Staff comment: The application is consistent with the General Plan; see comments below.

The memo also reviewed the applications conformance to the General Plan. The above described application conforms to the North Ogden City General Plan due to its being compliant with city ordinances and the following Plan goal: A variety of quality housing opportunities will be available to the citizens of the City. Quality residential development will be measured by design, maintenance, preservation of community resources, and open space.

The memo concluded by offering the following potential Planning Commission considerations:

- Does the proposed use meet the requirements of the applicable City Ordinances?
- Are there any potentially detrimental effects that need to be mitigated by imposing conditions of approval; and if so, what are the appropriate conditions?

Staff recommends approval of the application subject to compliance with North Ogden City ordinance.

Mr. Scott reviewed his staff memo.

Applicant Karen Smith, 3217 N. 500 E., addressed the possibility of noise associated with the preschool and stated that all breaks will be within the classroom and not outside so noise should not be an issue.

Vice-Chairman Waite stated Ms. Smith is located a distance from 3100 North and there should not be much traffic. Ms. Smith agreed and stated there is nearly no traffic at the times that parents will be traveling to and from her home.

Commissioner Prisbrey asked Ms. Smith if she has a drop-off/pick-up plan for the preschool. Ms. Smith stated that she has developed a parking plan that she will provide to all parents and ask them to follow. There will be 10 children in class and four of them plan to walk to and from her home.

Vice-Chairman Waite made a motion to approve a conditional use permit for a preschool located at approximately 3127 N. 500 E. subject to the conditions listed in the staff report. Commissioner Prisbrey seconded the motion.

Voting on the motion:

Chairman Thomas	yes
Vice-Chairman Waite	yes
Commissioner Barker	yes
Commissioner Mason	yes
Commissioner Prisbrey	yes
Commissioner Russell	yes

The motion passed.

7. DISCUSSION AND/OR ACTION TO APPROVE BUILDING PLANS FOR LEWIS PEAK PHASE II SUBDIVISION

Mr. Scott reported that in the past the developer of the Lewis Peak subdivision has submitted individual building plans for the Lewis Peak Phase II Subdivision individually, but upon a recommendation from the Planning Commission they have now provided a range of design options and are requesting Planning Commission approval for the remaining vacant lots in the subdivision.

Jonathan Arrington, representing the applicant Sierra Homes, provided an overview of the different house plans and color panel included in their application for approval. There was a brief general discussion regarding the process that would be followed to allow staff to consider and approve minor revisions to the designs and plans.

Commissioner Prisbrey made a motion to approve building plans for Lewis Peak Phase II Subdivision and give staff authorization to consider future minor changes to the plans. Vice-Chairman Waite seconded the motion.

Voting on the motion:

Chairman Thomas	yes
Vice-Chairman Waite	yes
Commissioner Barker	yes
Commissioner Mason	yes
Commissioner Prisbrey	yes
Commissioner Russell	yes

The motion passed.

8. DISCUSSION TO AMEND ORDINANCE 11-10, REGULATIONS APPLICABLE TO MORE THAN ONE ZONE TO ESTABLISH STANDARDS FOR ACCESSORY BUILDINGS IN RESIDENTIAL ZONES

A staff memo from City Planner Scott explained when the Planning Commission is acting as a recommending body to the City Council, it is acting in a legislative capacity and has wide discretion. Examples of legislative actions are general plan, zoning map, and land use text amendments. Legislative actions require that the Planning Commission give a recommendation to the City Council. Typically the criteria for making a decision, related to a legislative matter, requires compatibility with the general plan and existing codes. On December 17, 2014 the Planning Commission reviewed a request from Shelley Hancock expressing a desire to have North Ogden City adopt standards to eliminate the use of trailer pods as storage sheds. Staff presented several options based on research of other ordinances from around the state. On January 7, 2015 the Planning Commission reviewed a draft ordinance that incorporated the standards from the December 17, 2014 meeting. The Planning Commission gave additional direction on several items:

Accessory Building Standards:

Materials for sheds over 200 square feet. There was a discussion about adding HDPE as an allowed siding material for buildings over 200 square feet; however the City planner has the discretion to allow other compatible materials that are not listed with an appeal to the Planning Commission. That satisfied the Planning Commission and no change has been made to the ordinance.

Agricultural Properties. There were several people who commented that agricultural properties should be allowed to have converted semi-trailers or shipping containers.

The Zoning ordinance defines agriculture as:

AGRICULTURE: The tilling of the soil, the raising of crops, horticulture and gardening.

"Agriculture" does not include any agricultural industry or business, such as fruit packing plants, fur farms, animal hospitals or similar uses.

In the RE-20 zone there is a provision for agricultural operations:

Agriculture. The use of agricultural equipment that produces excessive noise and/or light may only be used during normal hours of work allowed in the city or by variance to the hours allowed by the city council.

Agriculture nurseries and greenhouses, provided the sale of goods is limited to materials produced on the premises, and there is no retail shop operated in connection therewith.

North Ogden City does not have a true agricultural zone. The closest zone is the RE-20 zone. Staff would offer the following alternatives:

First, provide a definition of barn and provide standards similar to our definition of a large accessory building.

Barn (*See also agricultural building*) A large accessory building used exclusively for the storage of grain, hay, and other farm products, or the sheltering of livestock or farm equipment.

(*Germantown, Tenn.*)

An accessory structure upon a lot customarily used for the housing of livestock or for the storage of crops or machinery used in bona fide agricultural activities. (*Trenton Township, Ohio*)

A building used for the housing and care of horses or other permitted livestock, and for the storage of feed, hay, other crops, and farm or equine equipment, and permitted uses accessory to those listed herein. (*Woodside, Calif*)

Agriculture building (*See also farm building*) A structure on agricultural land designed, constructed, and used to house farm implements, livestock, or agricultural produce or products used by the owner, lessee, or sub-lessee or their immediate families, their employees, and persons engaged in the pick up or delivery of agricultural produce or products grown or raised on the premises. The term "agricultural building" shall not include dwellings. (*Wilton, NH.*)

A structure designed and constructed to store farm implements or hay, grain, poultry, livestock, fruit, and other agricultural products. Controlled atmosphere and cold storage warehouses are not agricultural buildings. An agricultural building shall not be used for human habitation, processing, treating, packaging agricultural products, or as a place used by the public. (*Yakima, Wash.*)

A structure principally utilized for the storage of machinery used for purposes of crop production or for the shelter and feeding of livestock. (*Huntington, Ind.*)

Structures intended primarily or exclusively for support of an agricultural function, and exemplified by, but not restricted to, barns, silos, water towers, windmills, greenhouses.

(*Ashland, Ore.*)

Farm building (*See also agricultural building*) Any building used for storing agricultural equipment or farm produce or products, housing livestock or poultry, or processing dairy products. The term "farm building" shall not include dwellings, but shall include a barn or silo.

(*Willistown Township, Pa.*)

Any building or structure, other than a dwelling unit, built or placed upon land within a bona fide farm and considered essential and standard to the carrying on of farm operations. (*Trenton Township, Ohio*)

The memo included a second recommendation: in the RE-20 zone include an additional area requirement, e.g., 5-10 acres or larger.

Portable Storage Containers

The Planning Commission requested an exception be granted for portable storage containers for temporary businesses, e.g., fireworks stands. A provision could be included in the existing ordinance allowing one portable storage container per temporary business with a maximum size.

Amortization

Staff is currently aware of two locations where there are non-traditional pods/trailers being used as accessory buildings. The Planning Commission will need to decide whether or not to place an amortization time limit on these existing sheds to have them removed after a reasonable time period, e.g., 2-3 years. Otherwise, if the ordinance is amended these existing pods will be able to stay with a non-conforming status.

The following sections from the General Plan should be considered as part of this decision process:

Community Development

(3) Implementation Goal: All existing and new development should be required to fairly and uniformly provide improvements according to city standards.

Community Aesthetics

The citizens of North Ogden want a community that has admirable visual qualities in all areas of the city. The visual quality of the city and its surroundings are important. These qualities create a sense of pride and place and they should be maintained.

(3) Implementation Goal: Attractiveness, orderliness, and cleanliness are qualities that establish North Ogden as a place where people care about visual appearances. These qualities should be preserved and required throughout the city

Zoning Ordinance

Zoning is an implementation device used to accomplish the intended purposes of the General Plan. The purpose of zoning is to group compatible land uses and to establish densities and requirements for all development. Suggested improvements for the City of North Ogden Zoning Ordinance include the following. Conduct a general review of the entire zoning ordinance to check for conformance to the new General Plan. Make appropriate modifications.

The memo offered the following summary of potential Planning Commission considerations:

- Does the Planning Commission want a definition for barns to be included in this ordinance for accessory buildings?
- Does the Planning Commission want to include an amortization provision to eliminate the existing pods/trailers after a certain time period?
- Does the Planning Commission want to allow an exception for temporary businesses to have a portable storage container?
- Are the draft ordinances consistent with the General Plan?

Staff recommends the Planning Commission discuss the options for addressing shed standards; once the Planning Commission identifies a direction then Staff will prepare a draft ordinance.

Mr. Scott reviewed his staff memo as well as the amendments that have been made to the draft ordinance since the last Planning Commission discussion of the issue.

Chairman Thomas then invited public input regarding the issue.

Jonathan Badger stated he is the owner of Lee's Marketplace and wanted clarification regarding whether a business's use of trailers for storage will be prohibited. He stated there are several occasions throughout the year where it is necessary for him to use storage trailers to accommodate inventory increases during a sale.

Vice-Chairman Waite asked Mr. Badger if he uses shipping containers. Mr. Badger answered no and stated he uses semi-trailers that are dropped off behind his store and screened from adjacent properties by a wall. The most trailers he has kept on site at one time is three and that is during the winter months for Christmas sales.

Diane Childs, 2687 N. 200 E., stated that she has two storage trailers in her back yard. She lives on an acre and the back portion of her property is not being used so she allowed a friend to use it to store his trailers there. She is frustrated that this entire issue was started by one complaint from a disgruntled neighbor; it seems like the tail is wagging the dog. She stated that grandfathering existing uses may be a good idea, but she is frustrated that exceptions will be made for agricultural properties.

Ben Gerritsen, 683 E. 2650 N., stated that he knows many of the people that live on Ms. Childs' street as well as Ms. Childs and he feels that anyone living in the Ranchettes development should be given the agricultural zoning designation and that their uses should be grandfathered. Many of the families that have lived there have done so for nearly 40 years and their property rights should be protected and the uses that were allowed when they purchased their properties should be allowed to continue.

Commissioner Russell addressed Mr. Scott and inquired as to whether other neighboring communities have adopted ordinances similar to one that is being considered. Mr. Scott stated that he sent a request to other planners throughout the State and he received responses from seven or eight cities that have regulations similar to what he is recommending. Commissioner Russell inquired as to the closest community and the most comparable in size with regulations similar to what is proposed in the ordinance. Mr. Scott stated Ogden City is the closest in proximity and Syracuse in Davis County was most comparable in size. He stated he feels Ogden City's ordinance is best to pattern after because it is most clear and concise. Commissioner Russell stated he understands the need to be clear and concise, but he does not feel North Ogden compares to Ogden. Mr. Scott stated the Planning Commission should simply focus on the standards that are best for North Ogden irrespective of the size of the city from which those standards are being borrowed.

Commissioner Prisbrey asked if it is true that this issue was raised by just one complaint to a City Council Member. Mr. Scott answered yes. Commissioner Prisbrey stated he personally does not feel further regulation of this type of land use is necessary and he also agrees that Ogden City's ordinance may not be a good fit for North Ogden. Mr. Scott stated the City currently has no standards regarding this issue and the Planning Commission must decide if standards are needed; there are no standards relative to building materials, etc.

Commissioner Barker wondered if it is problematic for North Ogden to not have standards and whether there have been a lot of complaints about building materials. Mr. Scott stated everyone has their own opinions regarding what is acceptable and reiterated the Planning Commission must decide if they want standards associated with certain uses.

Chairman Thomas stated that he believes that most smaller storage sheds that are under 200 square feet and, thus, do not require a building permit will be of the pre-manufactured type and building materials and colors should not be much of an issue.

Mr. Scott then stated addressed the comments made by Mr. Badger and noted his use of semi-trailers would not be impacted by the proposed ordinance.

The Planning Commission then engaged in discussion and debate regarding whether to proceed with enacting design standards for storage sheds. They concluded it is appropriate to leave the City's current ordinance unchanged at this time. Mr. Scott stated the Planning Commission has multiple options: first is to forego a public hearing and send a recommendation to the City Council relative to the proposed ordinance; second would be to craft a motion directing him to write an ordinance relative to enacting standards for certain lots or segments of particular zones. He reminded the Planning Commission that the ordinance would also contain standards for commercial uses and not just residential uses. Discussion ensued regarding whether there would be a need to enact standards for storage facilities on commercial uses or whether that would be addressed during the site plan step in the development review process, after which City Attorney Call stated regardless of the Planning Commission's feelings regarding the matter, they should still hold a public hearing since they were directed by the City Council to consider this issue; at the conclusion of the public hearing a recommendation should be forwarded to the City Council. Or, the Planning Commission could direct staff to send an informal recommendation to the City Council and ask if they want a formal recommendation in order for them to discuss and act upon the issue during an open Council meeting. Discussion continued, with Mr. Scott noting he feels it would be helpful to add an agricultural land use designation to the City's ordinance; he feels there are some other items independent of shed design standards that would be helpful to include in the City's ordinance. The Planning Commission ultimately concluded to recommend that staff provide an informal recommendation to the City Council and ask for clarification regarding the items in the ordinance that the City Council is interested in the Planning Commission reconsidering.

2. PUBLIC HEARING TO RECEIVE COMMENTS TO REZONE PROPERTY, LOCATED AT APPROXIMATELY 2500 N 500 E, FROM RESIDENTIAL R-2 TO LEGACY PLANNED UNIT DEVELOPMENT ZONE (PRUD)

A staff memo from City Planner Scott explained when the Planning Commission is acting in a legislative capacity it has wide discretion. Examples of legislative actions are general plan, zoning map, and land use text amendments. Legislative actions require that the Planning Commission give a recommendation to the City Council. Typically the criteria for making a decision, related to a legislative matter, require compatibility with the general plan and existing codes. The applicant is requesting that the property located at approximately 2500 North and 500

East be rezoned from Residential Zone (R-2) to Legacy Planned Unit Development Zone (PRUD). The rezone is in anticipation of submitting a subdivision application for the next phase of the Legacy North PRUD thus necessitating the rezone request. The applicant's proposed subdivision is designed for lots ranging in size from approximately 4,500 square feet to 6,000 square feet. The General Plan calls for "All development in the community should be built on land suitable for the intended use." Additionally, "A variety of housing opportunities should be available to the citizens of the City. Quality residential development will be measured by design, maintenance, preservation of community resources, and open space." The Zoning and Land-Use Policy includes guidelines for how zoning changes should be considered:

General Guidelines

1. A definite edge should be established between types of uses to protect the integrity of each use.

Staff comment: The proposed PRUD/subdivision has defined edges; the easterly property boundary borders Phases 1 and 2 of the Legacy North PRUD. The western boundary is the Smith's Market Place which is zone CP-2.

2. Zoning should reflect the existing use of property to the largest extent possible, unless the area is in transition.

Staff comment: This area is in transition from agricultural to urban uses, primarily single family subdivisions next to the commercial center along Washington Boulevard.

3. Where possible, properties which face each other, across a local street, should be the same or similar zone. Collector and arterial roads may be sufficient buffers to warrant different zones.

Staff comment: This neighborhood has the Legacy North PRUD zone and is consistent with the existing Legacy North PRUD.

4. Zoning boundaries should not cut across individual lots or developments (i.e., placing the lot in two separate zones). Illogical boundaries should be redrawn to follow property or established geographical lines.

Staff comment: The petition has all properties in the same zone.

Residential Guidelines

8. Avoid isolating neighborhoods.

Staff comment: The street layout provides for appropriate connections that will provide connectivity to other neighborhoods.

10. Multiple density development should be phased, i.e., rezone only the property associated with current phase of development.

Staff comment: This is the last phase of this project.

The General Plan map calls for this property to be developed as single family residential, medium density. The Legacy North PRUD zone is consistent with this designation.

The memo offered the following summary of potential Planning Commission considerations:

- Is the proposal consistent with the General Plan?
- Does the proposal meet the North Ogden Zoning ordinance standards?
- How does the proposal relate to the Zoning and Land-Use Policy for evaluating zoning requests?
- Is the Legacy North PRUD zone request appropriate for this neighborhood?

The memo concluded this is a policy decision; the General Plan allows for the Legacy North PRUD zone classification for this property. If the Planning Commission determines that the Legacy North PRUD zone is appropriate; the Commission can find that the application is consistent with the North Ogden General Plan and recommend approval to the City Council.

Mr. Scott reviewed his staff memo as well as an aerial photograph to orient the Planning Commission and those in attendance to the location of the subject property. He also reviewed the concept plan, highlighting the design of the project.

Vice-Chairman Waite made a motion to open the public hearing at 7:34 p.m. Commissioner Russell seconded the motion.

Voting on the motion:

Chairman Thomas	yes
Vice-Chairman Waite	yes
Commissioner Barker	yes
Commissioner Mason	yes
Commissioner Prisbrey	yes
Commissioner Russell	yes

The motion passed.

Dr. Charles Beckett stated he is the current president of the Legacy North Homeowners Association (HOA) and last summer he polled all 63 homeowners in the subdivision and received a unanimous vote to accept the rezoning for this project. He stated his only recommended change would be to change the address from 2500 North to 2550 North.

There were no additional persons appearing to be heard and Chairman Thomas declared the public hearing closed at 7:37 p.m.

3. DISCUSSION AND/OR RECOMMENDATION TO REZONE PROPERTY, LOCATED AT APPROXIMATELY 2500 N 500 E, FROM RESIDENTIAL R-2 TO LEGACY PLANNED UNIT DEVELOPMENT ZONE (PRUD)

Commissioner Russell made a motion to forward a positive recommendation regarding the rezoning of property located at approximately 2550 N. 500 E. from Residential R-2 to Legacy Planned Unit Development Zone (PRUD) . Commissioner Barker seconded the motion.

Commissioner Prisbrey stated that he works with the applicant, John Hansen, as a realtor and he asked if he should recuse himself from voting. Mr. Call stated that unless Commissioner Prisbrey stands to profit or benefit financially from the project he does not need to recuse himself. Commissioner Prisbrey stated he will recuse himself.

Voting on the motion:

Chairman Thomas	yes
Vice-Chairman Waite	yes
Commissioner Barker	yes
Commissioner Mason	yes
Commissioner Prisbrey	recused himself
Commissioner Russell	yes

The motion passed.

4. PUBLIC HEARING TO RECEIVE COMMENTS TO AMEND ORDINANCE 11-7C-3, LEGACY PLANNED RESIDENTIAL UNIT DEVELOPMENT ZONE (PRUD), SITE DEVELOPMENT STANDARDS, TO REDUCE THE REAR SETBACK FROM 20 FEET TO 18 FEET

A staff memo from City Planner Scott explained when the Planning Commission is acting in a legislative capacity it has wide discretion. Examples of legislative actions are general plan, zoning map, and land use text amendments. Legislative actions require that the Planning Commission give a recommendation to the City Council. Typically the criteria for making a decision, related to a legislative matter, require compatibility with the general plan and existing codes. The applicant is requesting that the property located within the Legacy Planned Residential Unit Development Zone (PRUD) be amended to change the rear lot setback from 20 feet to 18 feet. The rezone is in anticipation of submitting a subdivision application that will be the last phase of the Legacy North project. The City in the past has adopted PRUD zoning for specific projects; this is no longer the case. In this instance the Legacy Planned Resident Unit Development zone applies to this specific project. The applicant has submitted an e-mail with the justification for this request. (See Exhibit B) The request states that the extra two feet will translate into a better single level patio home design to be between 1,700 feet and 1,925 feet. The applicant has spoken to the owners of Legacy Phase 1 who abut Phase 4 and no one has indicated opposition to this proposal. Notices have been sent to these property owners and they will have an opportunity to speak in the public hearing. Staff has received one phone call in opposition to this amendment. The adjacent properties to Phase 4 include Phase 1 of Legacy and the Smith's Marketplace. The setback difference will not impact the Smith's development and will allow the owners in the previous phases of the Legacy PRUD the additional flexibility of adding two feet to the buildable area for these lots. Title 11-11-1 contains the purpose statement of Planned Residential Unit Developments. The purpose statement gives guidance when considering this request; Staff has underlined some of the pertinent language:

A. The purpose of the planned residential unit development (PRUD) is to encourage better utilization of land, to develop a sense of community and to ensure compatibility with the surrounding neighborhoods. This is accomplished by allowing flexibility in the placement and design of buildings and infrastructure not ordinarily allowed in conventional zoning regulations. It allows flexibility in development standards for creative design and yet provides specific requirements to ensure surrounding properties and natural features are protected.

B. A planned residential unit development is a residential development planned as a whole, single complex. It incorporates a definite development theme which includes the elements of usable open space, diversity of lot design, residential use and amenities, a well-planned circulation system, and attractive entrances as part of the design. The incorporation of one or two (2) of these elements into a development does not make a PRUD. The combination of all of these elements is necessary for the development of a PRUD.

e. An increase in housing density in order to make a project more economically profitable, is not an objective of a PRUD. The developer must calculate in his or her pro forma the viability of a proposed PRUD project given the regulatory structure required by this chapter. Reductions in lot sizes may be granted, as provided herein, but only when the reduction and/or more creative configuration of the lots results in better use of the land, the creation of usable common activity areas and improved aesthetics. These benefits should reasonably promise to enhance the enjoyment of life within the PRUD to a degree that would not otherwise be achievable without the lot size concessions.

The Legacy Park North project has an established design theme and has met a specific market. It is a successful project. The applicant believes that increasing the buildable area will further enhance the project's viability. Staff has researched whether or not there has been a reduced setback for any other PRUDs in North Ogden. The Lewis Peak PRUD has a reduced rear setback of 18 feet.

The General Plan calls for "All development in the community should be built on land suitable for the intended use." Additionally, Zoning Ordinance Suggested improvements for the city of North Ogden Zoning Ordinance include the following:

(1) Update the Zoning Ordinance to allow for a variety of current housing types.

Housing

A variety of housing opportunities should be available to the citizens of the City. Quality residential development will be measured by design, maintenance, preservation of community resources, and open space.

(2) Implementation Goal: Housing for the aging population of the city should be encouraged through city incentives and senior citizen programs to attract retirement living facilities.

(3) Implementation goal: Diverse housing alternative should be available for the present and future residents of the city.

The General Plan map calls for this property to be developed as single family residential, medium density. Planned Unit Developments are allowed in this designation.

The memo provided the following summary of potential Planning Commission considerations:

- Is the proposal consistent with the General Plan?
- Does the proposal meet the North Ogden Zoning ordinance standards?
- How does the proposal relate to the Zoning and Land-Use Policy for evaluating zoning requests?
- Is the Legacy Planned Residential Unit Development amendment to reduce the rear setback appropriate for this neighborhood? Will it impact adjoining properties?
- Is the flexibility of design sought by the applicant appropriate?

The memo concluded this is a policy decision; the General Plan calls for a diversity of housing types while maintaining quality development. If the Planning Commission determines that the amendment is appropriate to reduce the rear setback from 20 feet to 18 feet in the Legacy Planned Residential Unit zone; the Commission can find that the application is consistent with the North Ogden General Plan and recommend approval to the City Council.

Prior to reviewing his staff memo, Mr. Scott reported that it was his understanding that the subject application would only apply to the northern area (which he identified on a map), but he later found that the application actually applied to the northern and southern areas of the subject property. He noted that legal notification of the text amendment was not done for the southern area of the property and, in speaking with legal counsel prior to the meeting, he found that any recommendation made by the Planning Commission tonight would only apply to the northern area of the property. Mr. Call clarified that if a property is being rezoned, certain legal noticing requirements must be met; however, if the consideration is whether to change a zoning ordinance, it is not necessary to notify everyone subject to the zoning ordinance. He stated he thinks the application and its subject matter have actually been adequately noticed. He stated he feels the Planning Commission can make a recommendation that applies to the entire property.

Mr. Scott then reviewed his staff memo.

**Vice-Chairman Waite made a motion to open the public hearing at 7:53 p.m.
Commissioner Russell seconded the motion.**

Voting on the motion:

Chairman Thomas	yes
Vice-Chairman Waite	yes
Commissioner Barker	yes
Commissioner Mason	yes
Commissioner Prisbrey	yes
Commissioner Russell	yes

The motion passed.

Dr. Charles Beckert, 546 E. 2500 N., stated that the HOA that he represents voted last year to support and welcome the 22 new homes that John Hansen plans to build, but the reason that he is opposed to this application is that he feels there was a major mistake made at the beginning of the project. He stated that the people that live on 525 East measured from the back of their homes to their fences and the distance is nowhere near 20 feet and further reductions are simply not fair. He stated he is unsure of whether Mr. Hansen wants to address that issue, but it does not appear that 38 feet between the rears of two homes will be enough to provide privacy; a two foot reduction for what would have normally been a 20 foot backyard equals a 10 percent reduction, which is a significant amount. He is suggesting that what Mr. Hansen is requesting is not a good idea and it may be necessary to redesign homes in the new phase to accommodate the setback currently required.

Building Official Kerr offered clarification of setback requirements and noted it may be a possibility that patios or covered patios are encroaching in the setback and that may be where people are measuring their backyards from. Visitors clarified that they measured from their foundation to their fences. Chairman Thomas stated there may be a couple of feet on the other side of the fence that is actually owned by the homeowners, but the fence was located in its current location due to the location of a nearby ditch. Dr. Beckert stated he believes that is true. Mr. Kerr stated that the City performs inspections and measures setbacks from the foundation to a property line.

Charlie Schmaltz, 560 E. 2350 N., stated he is the treasurer of the HOA. He stated there are two different issues in his mind; on the west side the property line is defined by the fence that was erected by Smith's Marketplace. On the east side the property line is not clearly defined and fences were put in by various owners. Even with the fences pulled out, the issue at hand is the distance between homes and it may be more appropriate to consider the distance from homes rather than the distance from property lines. He concluded the property lines between phases one and two as well as phase four is ill-defined.

Sharon Wheelwright, 2415 N. 525 E., stated she called Mr. Scott to discuss this issue with him and she never received a return phone call. She stated she is very concerned and she invited the Planning Commission to come and see the property and she feels that would make the difference in this discussion; the homeowners have measured from their foundations to their fences and if this amendment is approved the rear neighbors would be very close and there would not be enough privacy or even enough room to plant trees or shrubs to buffer.

Lola Thompson, 2473 N. 525 E., stated she has inspected the title for her home and she requested a map from the County Assessor in order to try and understand where her property lines are located. She stated she thought the fence in her backyard represented her property line, but it does not; in fact there is a deep ditch and a road behind her property that has caused her to lose four feet of her rear yard. She stated she has been paying property taxes for that four feet of property and she wondered if changes will be made to ensure she gains use of that four feet or if her property deed will be amended to ensure that she no longer pays taxes for that property. She stated the developer has taken four feet from her already and she requested that the Planning Commission not give him two more.

Reid Miller, 2441 N. 525 E., stated residents are ensured the right to life, liberty, and the pursuit of happiness according to the Declaration of Independence. Part of the pursuit of happiness is property and restrictions upon people's property is taking away one of those inalienable rights. This is a basic right the Planning Commission needs to consider and he recommended that they leave the current ordinance unchanged.

Leonard Linney, 2527 N. 525 E., stated many of the concerns could be addressed if someone took the time to actually define the property lines and install the fences where they truly belong; if the current residents are not going to have access to the property they actually own then they are opposed to this amendment.

Mr. Scott noted that he did some research regarding the ordinances that were in place at the time that the existing phases of the Legacy development were constructed and in 2001 there was a provision made to allow a reduced setback of 10 feet on some of the lots. He stated it may be beneficial to conduct further research and meet with the concerned residents to see if their lots fell under that ordinance. He added that when work on the new phase of the subdivision commences, the developer will be required to conduct a survey and the surveyor will identify the accurate location of the west property lines of the existing residents.

The Planning Commission engaged in a discussion regarding the actual differences between the current ordinances and the proposed text amendment, with Mr. Scott concluding he would recommend the Planning Commission table this item to give staff additional time to conduct further research regarding the circumstances surrounding the setbacks of the existing properties in the Legacy development.

Gerald James, 1074 E. 3200 N., stated he is not a property owner in Legacy, but he has assisted some of the property owners in understanding this situation; as near as he can tell the existing property owners are measuring from their foundations to their fence because they have been told that the fence was installed on their property line. They have found upon those measurements that their property lines are actually located beyond the fence and possibly even in the nearby ditch; if the developer wants the property he must provide a legal survey.

Mr. Miller re-approached and noted that his property has a nice covered patio and the distance between his patio and the fence is only enough room for about three people. He stated his concern is not the amount of space he has in his backyard, but he is concerned about privacy being impacted by rear neighbors being located too close to existing neighbors. He stated that the existing residents would like at least 40 feet between the two homes and he requested that the ordinance remain unchanged.

LaDawn Hurst, 2453 N. 525 E., agreed with Mr. Miller and stated she is concerned about the short distance between decks in both rear yards when she has a neighbor behind her. She stated privacy will be greatly impacted and even further impacted if the requested text amendment is approved.

Dr. Beckert re-approached and stated that he currently has rear neighbors, but there are no fences between the properties and he had heard that Mr. Hansen was recommending that the fences be taken down in this new phase of the development to make the lots contiguous.

Mr. Hansen approached and apologized for being late. He then explained the reason for his request was to try to make the homes in the new phase of the development a little larger; the homes will not have basements, but people would like homes between 1,600 and 1,700 square feet. He stated he never intended on upsetting the existing residents and he is happy to withdraw the request to reduce the setback because he does not want to upset them. He stated he will officially withdraw. He then addressed Dr. Beckert's comments and stated that he would like to tear the existing fences down, pipe the ditch, and landscape the properties all together so that they blend.

Chairman Thomas stated the only option that could possibly be considered is adjusting the front setback by two feet in order to maintain the rear setback, but still meet Mr. Hansen's goal of building larger homes. The Planning Commission and staff discussed this option, with staff indicating it would not be possible because the garages of the homes would be located too close to the street. Mr. Hansen stated he is willing to adjust the design of the homes to meet the setback requirements.

There being no additional persons appearing to be heard, Chairman Thomas declared the public hearing closed at 8:24 p.m.

5. DISCUSSION AND/OR RECOMMENDATION TO AMEND ORDINANCE 11-7C-3, LEGACY PLANNED RESIDENTIAL UNIT DEVELOPMENT ZONE (PRUD), SITE DEVELOPMENT STANDARDS, TO REDUCE THE REAR SETBACK FROM 20 FEET TO 18 FEET

Chairman Thomas stated it is not necessary for the Planning Commission to make a recommendation regarding this item because the applicant officially withdrew his application.

9. PUBLIC COMMENTS

David Gordon, 1334 E. 2650 N., addressed item eight on the agenda. He stated he is a business owner in the City and he has been contacted by several other business owners who are concerned about restrictions regarding accessory buildings. He stated that the trailers located behind Lee's Marketplace are storage trailers and they are moved around quite a bit. He stated Wal-Mart also has storage containers lined up all the time and it is a common need for a business to store items throughout the year for various reasons. He stated he believes accessory buildings and storage units are important in order for businesses to remain viable. North Ogden has taken the stance in the last couple of years to be pro-business and he hopes that continues.

Chairman Thomas informed Mr. Gordon that the Planning Commission decided not to take action on the ordinance regarding standards for accessory buildings and storage units. He stated the Planning Commission is very sensitive to allowing businesses to operate.

10. PLANNING COMMISSION/STAFF COMMENTS

Mr. Scott reported that a new Planner has been hired by the City and he will be introduced to the Planning Commission in the near future.

Chairman Thomas then provided a report regarding the status of the project to update the General Plan, with a brief focus on recent public meetings that have been held to facilitate public involvement in the process.

11. ADJOURNMENT

Commissioner Prisbrey made a motion to adjourn the meeting. Vice-Chairman Waite seconded the motion.

Voting on the motion:

Chairman Thomas	yes
Vice-Chairman Waite	yes
Commissioner Barker	yes
Commissioner Mason	yes
Commissioner Prisbrey	yes
Commissioner Russell	yes

The motion passed.

The meeting adjourned at 8:35 p.m.

Planning Commission Chair

Stacie Cain,
Deputy City Recorder

Date approved